

Montana Water Court
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FILED
07/18/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0402-R-2020
Ostrem, Eyvind
34.00

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE**

CLAIMANTS: Steven L. Buckner; Hans E. Buckner; Buckner Family
Trust; **Ronald J. Van Dyke**

OBJECTORS: Ronald J. Van Dyke; Steven L. Buckner

41G-0402-R-2020

41G 49976-00

41G 49977-00

41G 49979-00

41G 95637-00

41G 95675-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned water right claims appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) issued February 15, 2018. The claims received objections from water users and issue remarks from the Department of Natural Resources and Conservation (DNRC) identifying potential legal or factual issues with the claims. The claims were consolidated into case 41G-R402 to address the objections and issue remarks. That case number was changed to 41G-0402-R-2020 in accordance with new case naming procedures.

Johns Ranch Inc. and Lelland Johns objected to claims 41G 49976-00, 41G 49977-00, 41G 49979-00, 41G 95637-00, and 41G 95675-00. They moved to withdraw their objections and the Court dismissed Johns Ranch's objection on September 30, 2020, and Lelland Johns' objection on November 6, 2020. Steven Buckner objected to claim 41G 95675-00 and filed a withdrawal of his objection on March 2, 2023. The State of Montana Department of Fish, Wildlife and Parks (DFWP) objected to claims 41G 49977-00 and 41G 49979-00 and withdrew its objections on October 19, 2022. Ronald Van Dyke objected to claim 41G 95637-00. On April 1, 2021, Steven Buckner, Hans Buckner, and Ronald Van Dyke submitted a Joint Settlement Agreement (Stipulation) to resolve Ronald Van Dyke's objection to claim 41G 95637-00.

The Stipulation and all other court filings are viewable in the Water Court's online Full Court Enterprise case management system. The issues and requested modifications are addressed below.

FINDINGS OF FACT

Claim 41G 49976-00:

1. Claim 41G 49976-00 is a flood irrigation claim to 1.00 CFS from Little Whitetail Creek. It appeared in the Preliminary Decree with the following issue remarks raising legal or factual issues:

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE, MAXIMUM ACRES, PERIOD OF USE, POINT OF DIVERSION, AND MEANS OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

POINT OF DIVERSION APPEARS TO BE NWSNW SEC 6, TWP 02N RGE 04W. THIS ISSUE REPRESENTS A SUSTAINED ELEMENT AND AS SUCH WAS NOT MODIFIED BY THE DNRC PER WATER COURT ORDER.

2. Counsel for Steven Buckner informed the Court in a December 7, 2022 Status Conference that Mr. Buckner's late objection is withdrawn. On March 20, 2023, the Buckner Family Trust filed a Verified Motion to Amend the claim agreeing with the point of diversion issue remark's suggested modification. Steven Buckner signed the verification. The Motion to Amend also requests that the periods of use and diversion be modified as requested in Mr. Buckner's August 22, 2008 Verified Motion to Amend. No party opposed the Motion to Amend.

3. Pursuant to the Motion to Amend, the following corrections should be made to the claim 41G 49976-00:

Point of Diversion

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NWSNW	SEnw	6	2N	4W	JEFFERSON

Period of Diversion: ~~April 15 to October 1~~ March 15 to October 4

Period of Use: ~~April 15 to October 1~~ March 15 to October 4

The claim also received the following issue remarks that serve only to provide notice to water users (Notice Only Remarks):

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH A NAME CHANGE APPROVED BY THE UNITED STATES BOARD ON GEOGRAPHIC NAMES ON MAY 12, 1994, AND MCCALL V. CRUMB, CASE NO. 1862, JEFFERSON COUNTY. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WHITETAIL CREEK TO LITTLE WHITETAIL CREEK. BECAUSE OF UNCERTAINTY IN SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS MAY HAVE BEEN ADVERSELY AFFECTED MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 41G 49977-00

4. Claim 41G 49977-00 is a flood irrigation claim to 1.25 CFS from Little Whitetail Creek. It appeared in the Preliminary Decree with the following issue remarks raising legal or factual issues:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 22.00 GPM PER ACRE.

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE, MAXIMUM ACRES, PERIOD OF USE, POINT OF DIVERSION, AND MEANS OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

POINT OF DIVERSION APPEARS TO BE NWSNW SEC 6, TWP 02N RGE 04W. THIS ISSUE REPRESENTS A SUSTAINED ELEMENT AND AS SUCH WAS NOT MODIFIED BY THE DNRC PER WATER COURT ORDER.

5. Neither the claim file nor the flow rate guideline suggests that the flow rate for this decreed right is erroneous. Based on Steven Buckner's status reports in this matter, it appears his late objection to this claim has been sufficiently addressed. If Mr. Buckner disagrees, he may file an objection to this Master's Report.

6. On March 20, 2023, the Buckner Family Trust filed a Verified Motion to Amend the claim agreeing with the point of diversion issue remark's suggested modification. The verification was signed by Steven Buckner. The Motion to Amend also requests that the periods of use and diversion be modified as requested in Mr. Buckner's August 22, 2008 Verified Motion to Amend. No party opposed the Motion to Amend.

7. Pursuant to the Motion to Amend, the following corrections should be made to the claim:

Point of Diversion

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NWSNW	SESW	6	2N	4W	JEFFERSON

Period of Diversion: ~~April 15 to October 4~~ **March 15 to October 4**

Period of Use: ~~April 15 to October 4~~ **March 15 to October 4**

The claim also received the following Notice Only Remarks:

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH A NAME CHANGE APPROVED BY THE UNITED STATES BOARD ON GEOGRAPHIC NAMES ON MAY 12, 1994, AND MCCALL V. CRUMB, CASE NO. 1862, JEFFERSON COUNTY. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WHITETAIL CREEK TO LITTLE WHITETAIL CREEK. BECAUSE OF UNCERTAINTY IN SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS MAY HAVE BEEN ADVERSELY AFFECTED MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 41G 49979-00:

8. Claim 41G 49979-00 is a sprinkler and flood irrigation claim to 2.38 CFS from Little Whitetail Creek. It appeared in the Preliminary Decree with the following issue remarks raising legal or factual issues:

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE, MAXIMUM ACRES, PERIOD OF USE, POINT OF DIVERSION, AND MEANS OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

ON APRIL 11, 2002, STEVE BUCKNER FILED A LATE OBJECTION TO THE PLACE OF USE, MAXIMUM ACRES, PERIOD OF USE, POINT OF DIVERSION, AND MEANS OF DIVERSION. THIS WILL BE HEARD AFTER PROPER NOTICE IN THE NEXT OBJECTION LIST.

9. Counsel for Buckner informed the Court in a December 7, 2022 Status Conference that Mr. Buckner's late objection is withdrawn. The claim also received the following Notice Only Remark:

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH A NAME CHANGE APPROVED BY THE UNITED STATES BOARD ON GEOGRAPHIC NAMES ON MAY 12, 1994, AND MCCALL V. CRUMB, CASE NO. 1862, JEFFERSON COUNTY. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WHITETAIL CREEK TO LITTLE WHITETAIL CREEK. BECAUSE OF UNCERTAINTY IN SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS MAY HAVE BEEN ADVERSELY AFFECTED MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

Claim 41G 95637-00:

10. Claim 41G 95637-00 is a June 1, 1883 decreed irrigation claim to 3.13 CFS from Whitetail Deer Creek. On April 1, 2021, Steven Buckner, Hans Buckner, and Ronald Van Dyke submitted their Stipulation to resolve Ronald Van Dyke's objection

and Steven Buckner's late objection to the claim. The following corrections should be made as requested in the Stipulation:¹

Owners:

Steven Buckner

Hans Buckner

Ronald Van Dyke

Maximum Acres: ~~60.00~~ 152.00

Point of Diversion:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			<u>NWNWSW</u>	33	3N	4W	Jefferson
<u>2</u>			<u>SWNWNW</u>	<u>4</u>	<u>2N</u>	<u>4W</u>	<u>Jefferson</u>

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	57.00 <u>71.00</u>		SW	4	2N	4W	Jefferson
2	3.00 <u>22.00</u>		S2SWNW	4	2N	4W	Jefferson
<u>3</u>	<u>39.00</u>		<u>NWNW</u>	<u>4</u>	<u>2N</u>	<u>4W</u>	<u>Jefferson</u>
<u>4</u>	<u>20</u>		<u>W2SW</u>	<u>33</u>	<u>3N</u>	<u>4W</u>	<u>Jefferson</u>

Periods of Use and Diversion:

~~May 1 to November 1~~ **April 1 to November 5**

11. The maximum acres and place of use for this claim were previously addressed by the Water Court. In 1992, the Water Court called the claim in on its own motion, questioning the acres irrigated, place of use, and flow rate. The water master asked then-claimants Earl and Glenna Stucky to file affidavits and supporting maps attesting to the correct places of use, acres irrigated, and flow rate. Earl and Glenna Stucky complied, and on January 19, 1993, submitted an Affidavit attesting to those elements of the claim and a note stating, in part, "we have chosen these options." The Water Court then issued an August 17, 1994 Master's Report based on those affidavits,

¹ The Stipulation specifies the parties' underlying property ownership and their agreed apportionment of the flow rate for this claim. It does not request that this information be added to the claim via information remark or otherwise.

reducing the place of use to the 60 acres that appeared in the Preliminary Decree. Unfortunately, it appears that in their attempt to comply with the Court's requests, the "options" the Stuckys chose inaccurately described the historical use of this claim and therefore the Preliminary Decree requires correction.

12. Theodore Heit and Donato Correa filed the April 23, 1982 Statement of Claim for 152 acres and submitted a map of the historical acres. The DNRC successfully verified 124 of those acres. The affidavit the Stuckys filed in response to Water Court and DNRC letters apparently sought to split up a portion of the claimed place of use between two rights: 62 acres in the northern portion (NW of Section 4 and SWSW of Section 33) were attributed to claim 41G 95635-00, and 60 acres in the southern portion were attributed to this claim (41G 95637-00). Both those rights and others (including a May 7, 1910 Tanjor T. Black right) were held under common ownership by Francis Forgy at the time of the WRS field visit in May 1955.

13. The claim file suggests, and the parties to the Stipulation agree, that claim 41G 95637-00 was not entirely segregated from the surrounding water rights that were historically held in common ownership by Francis Forgy. Instead, the rights were likely marshalled for use on Forgy's place of use, as was common practice. The May 17, 1955 WRS field notes in the claim file specifically state that the right covered by this claim was used to supplement the May 7, 1910 Tanjor T. Black right (filed as claim 41G 49963-00). The Tanjor Black right included, in part, 175 acres of historical irrigation in the W2W2 of Section 4 T2N, R4W and 461 acres of historical irrigation in Section 33 T3N, R4W).² The 1994 Master's Report therefore erroneously reduced the maximum acres and place of use.

14. The DNRC's failure to verify 28 of the claimed 152 acres appears based on irrigation taking place during the 1955 WRS field visit, which is not conclusive of historical use. In sum, a preponderance of the evidence supports reinstating the originally claimed place of use and maximum acres.

² The historical place of use is based on an August 15 1994 Master's Report. The place of use for claim 41G 49963-00 was later changed to a more expansive service area that was not strictly limited by historical use pursuant to a May 17, 2022 Master's Report in case 41G-0141-R-2020.

15. The parties to the Stipulation agree Ronald Van Dyke should be added as an owner because he owns land within the historical place of use. Point of Diversion No. 2 should be added to reflect the historical sprinkler irrigation supported by Buckner's August 22, 2008 Verified Motion to Amend and the note Earl Stucky attached to his 1992 affidavit stating that the right has been used for sprinkler irrigation "over 25 years or longer."

16. The claim received the following issue remark raising legal or factual issues:

ON DECEMBER 22, 2000 STEVEN L. BUCKNER FILED A LATE OBJECTION TO CHANGE THE MAXIMUM ACRES IRRIGATED AND PLACE OF USE. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

The Stipulation states that it resolves Buckner's late objection to the claim. The claim also received the following Notice Only Remarks:

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH A NAME CHANGE APPROVED BY THE UNITED STATES BOARD ON GEOGRAPHIC NAMES ON MAY 12, 1994, AND MCCALL V. CRUMB, CASE NO. 1862, JEFFERSON COUNTY. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM LITTLE WHITETAIL CREEK TO WHITETAIL DEER CREEK. BECAUSE OF UNCERTAINTY IN SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS MAY HAVE BEEN ADVERSELY AFFECTED MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 41G 95675-00:

17. Claim 41G 95675-00 is a sprinkler irrigation claim from Whitetail Deer Creek. It received the following Notice Only Remarks:

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH A NAME CHANGE APPROVED BY THE UNITED STATES BOARD ON GEOGRAPHIC NAMES ON MAY 12, 1994, AND MCCALL V. CRUMB, CASE NO. 1862, JEFFERSON COUNTY. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WHITETAIL CREEK TO WHITETAIL DEER CREEK. BECAUSE OF UNCERTAINTY IN SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS MAY HAVE BEEN ADVERSELY AFFECTED MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS

THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The Water Court is not bound by settlement agreements. Settlement agreements are subject to review and approval of the Water Court. Rule 17, W.R.Adj.R. Where a settlement seeks to enlarge or expand an element of a claim, the documentation supporting the settlement must include sufficient evidence to meet the burden of proof. Rule 17(b), W.R.Adj.R.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The claims should be modified as described above. The objections filed by Lelland Johns, Johns Ranch, Steven Buckner and DFWP to the claims in this case have been withdrawn or dismissed. Steven Buckner's late objections have been withdrawn or resolved. Ronald Van Dyke's objection to claim 41G 95637-00 is resolved by the modifications described above.

2. The flow rate issue remark on claim 41G 49977-00 fails to overcome the prima facie status of the claim and should be removed from the claim. The Notice Only Remarks do not raise legal or factual issues for the Water Court to resolve and should be

removed from the claims. The remaining issue remarks are resolved by the requested modifications and information before the Court.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court make the above-described modifications and remove the issue remarks from the above-captioned claims.

A copy of the Stipulation and a post-decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

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Notice: Caption Updated 7.11.23

ELECTRONICALLY FILED

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41G-0402-R-2020

April 1, 2021

Montana Water Court

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Attorneys for Hans E. and Steven L. Buckner

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE**

CLAIMANT: Steven L. Buckner; Hans E. Buckner

41G-0402-R-2020

OBJECTORS: Johns Ranch, Inc.; Lelland L.
Johns; State of Montana (Department of Fish,
Wildlife & Parks); Ronald J. Van Dyke; Steven L.
Buckner

41G 49976-00
41G 49977-00
41G 49979-00
41G 95637-00
41G 95675-00

JOINT SETTLEMENT AGREEMENT

Comes Now, Claimant/Objector Steven L. Buckner and Hans E. Buckner (collectively "Buckner") by and through their undersigned counsel of record, Suenram & Bergeson and Objector, Ronald J. Van Dyke ("Van Dyke"), by and through his undersigned attorney of record, Cusick, Farve, Mattick & Refling, P.C. and pursuant to the Court's December 18, 2020 Order Extending Deadline submits this Joint Settlement Agreement, hereby resolving their respective

objections to water right claim no. 41G 95637-00 consolidated in Water Court Case 41G-0402-R-2020.

WHEREAS, Van Dyke properly filed an objection in the Preliminary Decree for the Upper Missouri River Division, Jefferson River – Basin 41G to water right claim no. 41G 95637-00 on February 11, 2019;

WHEREAS, said objection appeared in the Objection Index for the Basin putting all interested parties on notice;

WHEREAS, Van Dyke's objected to the Ownership, Place of Use/Maximum Acres, and Point of Diversion/Mean of Diversion for claim no. 41G 95637;

WHEREAS, Buckner filed a late objection to water right claim no. 41G 95637 on December 22, 2000 to the Place of Use/Maximum Acres, Point of Diversion/Mean of Diversion, and Period of Use/Period of Diversion, which late objection appeared as an issue remark on the abstract for claim no. 41G 95637, putting all interested parties on notice;

WHEREAS, Buckner and Van Dyke agree the historic place of use/maximum acres are not accurately reflected by the elements as set forth in the Jefferson River Basin 41G Preliminary Decree, and therefore agree to certain corrections to water right claim no. 41G 95637 in order to resolve their respective objections to the water right claim.


Therefore, the Parties agree that the elements of water right claim no. 41G 95637-00 should be as follows:

1. The historic place of use identified for claim no. 41G 95637-00 includes property owned by both Van Dyke and Buckner, therefore, Van Dyke should be added as a co-owner of water right claim no. 41G 95637-00.

2. Van Dyke and Buckner agree to split the flow rate of water right claim no. 41G 95637 in half. Buckner is the owner of 1.57 cfs of this claim and Van Dyke is the owner of 1.56 cfs of this claim.
3. The historic place of use/maximum acres should be 152 acres, specified as follows:
 - a. 71 acres SW $\frac{1}{4}$ Section 4, Township 2 North, Range 4 West
 - b. 22 acres SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, Township 2 North, Range 4 West
 - c. 39 acres NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, Township 2 North, Range 4 West
 - d. 20 acres W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 33, Township 3 North, Range 4 West
4. Buckner is the owner of the 71 acres located in the SW $\frac{1}{4}$ of Section 4, Township 2 North, Range 4 West.
5. Van Dyke is the owner of the remaining 81 acres located in the NW $\frac{1}{4}$ of Section 4, Township 2 North, Range 4 West and the SW $\frac{1}{4}$ of Section 33, Township 3 North, Range 4 West.
6. The correct location of the points of diversion for water right claim no. 41G 95637 are the headgate in the NWNWSW of Section 33, Township 3 North, Range 4 West, instead of the SWNWSW of Section 33, Township 3 North, Range 4 West, and a pumpsite in the SWNWNW of Section 4, Township 2 North, Range 4 West.
7. The correct period of diversion/period of use should be from April 1 to November 5 each year.
8. The Parties agree that the above specified corrections and shared use of water right claim no. 41G 95637-00 satisfies both of their respective objections to this water right claim.

Suenram & Bergeson

By:


Jean Bergeson

Attorney for Hans E. and Steven L. Buckner

Cusick, Farve, Mattick & Refling, P.C.

By:



Ryan K. Mattick

Jeremy A. Michael

Attorney for Objector Ronald J. Van Dyke

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document was duly served upon the below parties in the manner indicated on this 1st day of March, 2021.

Via U.S. Mail:

Aimee Hawkaluk
Agency Legal Counsel
Department of Fish, Wildlife & Parks
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Cusick, Farve, Mattick & Refling, P.C.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 49976-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BUCKNER FAMILY TRUST
STEVEN L & LINDA N BUCKNER TRUSTEES
53 RIDDER LN
WHITEHALL, MT 59759 9625

Priority Date: APRIL 26, 1902

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 80.00

Source Name: LITTLE WHITETAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSE	6	2N	4W	JEFFERSON

Period of Diversion: MARCH 15 TO OCTOBER 4

Diversion Means: HEADGATE

Ditch Name: HOUGHTON-MCALL DITCH NO. 4

Period of Use: MARCH 15 TO OCTOBER 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	60.00		E2SE	6	2N	4W	JEFFERSON
2	20.00		NWSE	6	2N	4W	JEFFERSON
Total:	80.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 49977-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BUCKNER FAMILY TRUST
STEVEN L & LINDA N BUCKNER TRUSTEES
53 RIDDER LN
WHITEHALL, MT 59759 9625

Priority Date: DECEMBER 25, 1880

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 25.00

Source Name: LITTLE WHITETAIL CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSE	6	2N	4W	JEFFERSON

Period of Diversion: MARCH 15 TO OCTOBER 4

Diversion Means: HEADGATE

Ditch Name: HOUGHTON-MCALL DITCH NO. 4

Period of Use: MARCH 15 TO OCTOBER 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		S2S2SW	5	2N	4W	JEFFERSON
2	15.00		NWNE	8	2N	4W	JEFFERSON
Total:	25.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 49979-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BUCKNER FAMILY TRUST
STEVEN L & LINDA N BUCKNER TRUSTEES
53 RIDDER LN
WHITEHALL, MT 59759 9625

Priority Date: JULY 17, 1906

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.38 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 220.00

Source Name: LITTLE WHITETAIL CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		SESESE	6	2N	4W	JEFFERSON	
Period of Diversion:		APRIL 15 TO OCTOBER 15					
Diversion Means:		HEADGATE					
Ditch Name:		ROOT DITCH NO.1					
Period of Use:		APRIL 15 TO OCTOBER 15					
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	220.00		W2	8	2N	4W	JEFFERSON
Total:		220.00					

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 95637-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RONALD J VAN DYKE
129 RIDDER LN
WHITEHALL, MT 59759 9625

STEVEN L BUCKNER
53 RIDDER LN
WHITEHALL, MT 59759 9625

HANS E BUCKNER
PO BOX 276
WHITEHALL, MT 59759 0276

Priority Date: JUNE 1, 1883
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 3.13 CFS
Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 3 - MODERATE
***Maximum Acres:** 152.00
Source Name: WHITETAIL DEER CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSW	33	3N	4W	JEFFERSON
Period of Diversion: APRIL 1 TO NOVEMBER 5						
Diversion Means: HEADGATE						
Ditch Name: HOUGHTON-MCCALL DITCH NO 2						
2		SWNWNW	4	2N	4W	JEFFERSON
Period of Diversion: APRIL 1 TO NOVEMBER 5						
Diversion Means: PUMP						
Period of Use: APRIL 1 TO NOVEMBER 5						

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	71.00		SW	4	2N	4W	JEFFERSON
2	22.00		SWNW	4	2N	4W	JEFFERSON
3	39.00		NWNW	4	2N	4W	JEFFERSON

4	20.00	W2SW	33	3N	4W	JEFFERSON
Total:	152.00					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

95635-00

95636-00

95637-00

95638-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 95675-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: STEVEN L BUCKNER
53 RIDDER LN
WHITEHALL, MT 59759 9625

HANS E BUCKNER
PO BOX 276
WHITEHALL, MT 59759 0276

Priority Date: SEPTEMBER 12, 1902

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 395.00 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 35.00

Source Name: WHITETAIL DEER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSE	28	2N	4W	JEFFERSON

Period of Diversion: MAY 1 TO OCTOBER 29

Diversion Means: PUMP

Ditch Name: WHITETAIL DITCH

Period of Use: MAY 1 TO OCTOBER 29

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		NWNE	33	2N	4W	JEFFERSON
2	5.00		S2S2SWSE	28	2N	4W	JEFFERSON
Total:	35.00						